

STATE OF SOUTH CAROLINA

26301

(Caption of Case)

BEFORE THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

Happy Rabbit, LP on behalf of Windridge Townhomes, Complainant,

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2009 APR 13 11:23

COVER SHEET

v.

SC PUBLIC SERVICE COMMISSION

DOCKET

NUMBER: 2008 - 360 - S

Alpine Utilities, Inc., Defendant.

(Please type or print)

Submitted by: Benjamin P. Mustian, Esquire

SC Bar Number: 68269

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Columbia, SC 29202

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NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

DOCKETING INFORMATION (Check all that apply)

Emergency Relief demanded in petition

Request for item to be placed on Commission's Agenda expeditiously

Other:

Table with 2 columns: INDUSTRY (Check one) and NATURE OF ACTION (Check all that apply). Includes checkboxes for Electric, Gas, Sewer, Affidavit, Agreement, Answer, etc.

Print Form

Reset Form

RECEIVED WILLOUGHBY & HOEFER, P.A.

ATTORNEYS & COUNSELORS AT LAW

930 RICHLAND STREET

P.O. BOX 8416

COLUMBIA, SOUTH CAROLINA 29202-8416

2009 APR 14 AM 11:23

SC PUBLIC SERVICE  
COMMISSION

MITCHELL M. WILLOUGHBY  
JOHN M.S. HOEFER  
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TRACEY C. GREEN  
ALAN WILSON  
SPECIAL COUNSEL

\*ALSO ADMITTED IN TX

April 14, 2009

**VIA HAND-DELIVERY**

The Honorable Charles L.A. Terreni  
Chief Clerk/Administrator  
**Public Service Commission of South Carolina**  
101 Executive Center Drive  
Columbia, South Carolina 29210

RE: Happy Rabbit, LP on behalf of Windridge Townhomes v. Alpine Utilities, Inc.;  
Docket No. 2008-360-S

Dear Mr. Terreni:

Alpine Utilities, Inc. ("Alpine") herein responds<sup>1</sup> to Happy Rabbit, LP's ("Happy Rabbit's") April 9, 2009, letter captioned "Response to Alpine's April 8<sup>th</sup> Correspondence" ("Letter")<sup>2</sup> and its Reply to Respondent's Response to Complainant's Motion to Conform to Proof ("Reply") dated April 6, 2009.

Happy Rabbit states in both the Letter and the Reply that the Complaint filed by Happy Rabbit implicitly requests a return of money overcharged to Alpine's customers. See Letter, p. 1; Reply, p. 2. In response, Alpine would refer the Commission to Happy Rabbit's previous pleadings and prefiled testimony filed in this matter wherein Happy Rabbit denies that this proceeding seeks a monetary refund and asserts that the Complaint requests that the Commission "decide the proper utility and customer business relationship to be maintained in the future with tenants at the Windridge Townhomes." Happy Rabbit's Reply to Motion to Dismiss, p. 3, para.

<sup>1</sup> In the event that Alpine does not herein directly dispute a claim, statement, representation or characterization by Happy Rabbit, such omission is neither an acquiescence to any of Happy Rabbit's claims, statements, representations, or characterizations nor a waiver of any position previously asserted by Alpine.

<sup>2</sup> Happy Rabbit filed two separate letters dated April 9, 2009 with the caption "Response to Alpine's April 8<sup>th</sup> Correspondence." As clarification, the Happy Rabbit letter which is the subject of Alpine's instant response relates to the letter filed with the Commission by the South Carolina Office of Regulatory Staff on April 2, 2009.

(Continued . . .)

9.<sup>3</sup> Contrary to its current rationalization, Happy Rabbit has acknowledged and explained that its original Complaint does not seek monetary damages. Therefore, any assertion to the contrary should not be considered by the Commission.

In addition, Happy Rabbit restates its *in pari materia* argument originally set forth in its Return to Motion for Summary Judgment dated April 3, 2009. See Letter, p. 2; Reply, p. 4. Alpine would, therefore, reassert its position set forth in its Reply to Response to Motion for Summary Judgment dated April 8, 2009 and previously filed with the Commission.

If you have any questions, or if you need any additional information, please do not hesitate to contact me.

Sincerely,

**WILLOUGHBY & HOEFER, P.A.**



Benjamin P. Mustian

BPM/cf  
Enclosures

cc: Nanette S. Edwards, Esquire  
Richard L. Whitt, Esquire

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<sup>3</sup> Happy Rabbit has made several similar assertions in its filings with the Commission suggesting that, while the circuit court action seeks monetary damages, the Commission has jurisdiction over this action inasmuch as they seek a determination as to the "business relationship" between Alpine and Happy Rabbit:

"It is axiomatic that the [Commission] may not award monetary damages and enforce statutes completely unrelated to its jurisdiction. Because monetary damages are sought and a violation of the South Carolina Unfair Trade Practices Act is alleged, that cause of action is properly before the circuit court and those matters may not be heard by the [Commission]." Happy Rabbit's Reply to Motion to Dismiss, p. 2, para. 4.

The Commission Complaint "is simply based on the fact that Alpine improperly established and maintained its utility relationship with Windridge." Happy Rabbit's Reply to Motion to Dismiss, p. 5, para. 14.

"I am seeking an Order from this Commission requiring Alpine to comply with South Carolina Law. Specifically, I want the Commission to require Alpine to establish individual sewer utility accounts with all of Windridge's tenants." Happy Rabbit Witness Cook Direct Test. 3. 2, ll. 6-8.

"I filed the Complaint with this Commission, asking this Commission to declare the utility customer relationship required by Alpine to be unlawful under South Carolina Law. This Commission cannot award money damages, therefore I filed an appropriate action in Circuit Court to recover those damages." Happy Rabbit Witness Cook Direct Test. p. 3, ll. 15-19.

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THE PUBLIC SERVICE COMMISSION OF  
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Happy Rabbit, LP on behalf of Windridge, )  
Townhomes, )  
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Complainant )  
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v. )  
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Alpine Utilities, Inc., )  
 )  
Defendant. )  
\_\_\_\_\_ )

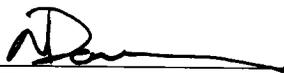
**CERTIFICATE OF SERVICE**

This is to certify that I have caused to be served this day one (1) copy of **Alpine Utilities Inc.'s April 14, 2009 Letter** via hand delivery to the address below:

Richard L. Whitt, Esquire  
**Austin & Rogers, P.A.**  
508 Hampton Street, Suite 300  
Columbia, SC 29211

I further certify that I have caused to be served one (1) copy of the above-referenced document by placing same in the care and custody of the United States Postal Service with first class postage affixed thereto and addressed as follows:

Nanette S. Edwards, Esquire  
**Office of Regulatory Staff**  
Post Office Box 11263  
Columbia, South Carolina 29211

  
\_\_\_\_\_  
Nathan Dawson

Columbia, South Carolina  
This 14<sup>th</sup> day of April, 2009.